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Canadian Human Rights
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A Guide to Screening and Selection in Employment

This guide is intended to help employers when they interview or hire staff — whether they are choosing a new employee or promoting one from within the organization.

An employment interview is conducted to learn more about the suitability of people under consideration for a particular job. However, sometimes the information sought on application forms or during interviews is not relevant to the job being filled and may let discriminatory elements creep into the selection process.

For example:

- an applicant's place of birth seldom has anything to do with ability
- height and weight requirements are often not accurate measures of physical strength and may act to screen out women or some racial groups who tend to be smaller in stature

A skilled interviewer will get the facts needed to properly assess a candidate, without drawing out a lot of unnecessary facts. This guide will highlight some of the common pitfalls in interviewing and suggest useful alternatives. No guide can anticipate every interview situation but it can attempt to help the interviewer avoid the kind of interview situation that could lead to a human rights complaint.

If managers or supervisors require additional information on human rights, especially as they relate to hiring and promotion procedures, they can write or call one of our offices. Addresses and phone numbers are found at the end of the brochure.

The Canadian Human Rights Act

The Canadian Human Rights Act entitles all individuals to equal employment opportunities without regard to:

race or colour
national / ethnic origin
religion
age
family / marital status
sex (including pregnancy or childbirth)
pardoned conviction
disability (either physical, mental or as the result of dependence on alcohol or drugs)

Section 8 of the Act defines it this way:

- "It is a discriminatory practice*
(a) *to use or circulate any form of application for employment,*
or
(b) *in connection with employment or prospective employment,*
(i) to publish any advertisement, or
(ii) make any written or oral inquiry that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination."

The Act covers employment in federal jurisdiction — the various federal government departments and agencies, Crown corporations, and federally-regulated industries such as the airlines, banks, railways, interprovincial pipelines, as well as telephone and transport companies that do business in more than one province.

Bona Fide Occupational Requirements

An exception to the Act is sometimes allowed when the abilities necessary to perform the essential job tasks are related in some way to one of the ten grounds of discrimination. A particular skill or qualification can be specified if the preference is based on a bona fide occupational requirement.

For example, a job that requires a certain level of hearing ability in order to be done in a safe and adequate way may require that a person with a functionally limiting hearing disability could not be hired in that job.

Bona fide occupational requirements focus on a person's actual ability — not assumptions based on a group characteristic. The CHRC has detailed materials available to explain the application of bona fide occupational requirements if you think that jobs in your organization are affected. You can obtain these guidelines by contacting the Commission.

Special Programs

The Act provides for voluntary employment programs which are designed to eliminate long-standing disadvantages in employment for certain groups. Special programs are a good way to offset the effects of past employment practices or inequities and help the organization provide equal opportunities for all applicants or employees.

Employers preparing to establish a special program need data on the specific group that the program will effect. Programs established to increase the numbers of a specific group in the industry need to be measured effectively. For example if an employer were to try to increase the number of visible minority workers within the organization, he/she would require data on the number of visible minority members that had applied, the proportion who had been hired and the proportion in the relevant labour market.

Employers are permitted to collect the data they require to plan and support special programs, even though the information collected may touch upon one of the prohibited grounds. However, in the event of a complaint, the onus is on the employer to show to the CHRC that such collected data has not been used to discriminate, either in the hiring process or later when deciding promotion opportunities.

Employers can seek advice and assistance on special programs or on determining their data collection needs by contacting: Canadian Human Rights Commission Systemic Discrimination Section 400-90 Sparks Street Ottawa, Ontario K1A 1E1 (613) 995-1151

The material that follows illustrates some helpful interview guidelines in the selection of job candidates. The content has no official standing as the basis of a complaint or as a defence to the Canadian Human Rights Commission.

Subject

Avoid Asking

Preferred



Comment

Disability

for listing of all disabilities, limitations or health problems

ask if applicant has any condition that could affect ability to do the job

a disability is only relevant to job ability if it:

whether applicant drinks or uses drugs

ask if the applicant has any condition which should be considered in selection

— threatens the safety or property of others

whether applicant has ever received psychiatric care or been hospitalized for emotional problems

— prevents the applicant from safe and adequate job performance even if reasonable efforts were made to accommodate the disability

Medical Information

if currently under physician's care

medical exams should be preferably conducted after selection and only if an employee's condition is related to the job duties. Offers of employment can be made conditional on successful completion of a medical

name of family doctor

if receiving counselling or therapy

Affiliations

for list of club or organizational memberships

membership in professional associations or occupational groups can be asked if a job requirement

applicants can decline to list any affiliation that might indicate a prohibited ground

Pardoned Conviction

whether an applicant has ever been convicted

if bonding is a job requirement
ask if applicant is eligible

inquiries about criminal record/convictions — even those which have been pardoned are discouraged unless related to job duties

if an applicant has ever been arrested

does applicant have a criminal record

References

The same restrictions that apply to questions asked of applicants apply when asking for employment references.

<i>Subject</i>	<i>Avoid Asking</i>	<i>Preferred</i>	<i>Comment</i>
Name	<p>about name change whether it was changed by court order, marriage, or other reason</p> <p>maiden name</p> <p>Christian name</p>		<p>if needed for a reference, to check on previously held jobs or on educational credentials, ask after selection</p>
Address	for addresses outside Canada	ask place and duration of current or recent addresses	
Age	<p>for birth certificates, baptismal records, or about age in general</p> <p>age or birthdate</p>	ask applicants if they have reached age (minimum or maximum) for work as defined by law	if precise age required for benefits plans or other legitimate purposes it can be determined after selection
Sex	<p>Mr/Mrs/Miss/Ms</p> <p>males or females to fill in different or coded applications</p> <p>if male or female on applications</p> <p>about pregnancy, childbirth or child care arrangements Includes asking if birth control is used or child bearing plans</p>	can ask applicant if the attendance requirements or minimum service commitment can be met	any applicants can be addressed during interviews or in correspondence without using courtesy titles such as Mr/Mrs/Miss
Marital Status	<p>whether applicant is single, married, divorced, engaged, separated, widowed or living common-law</p> <p>whether an applicant's spouse is subject to transfer</p> <p>about spouse's employment</p>	ask whether there are any known circumstances that might prevent completion of a minimum service commitment, for example	<p>if transfer or travel is part of the job, the applicant can be asked if this would cause a problem</p> <p>information on dependents for benefits can be determined after selection</p>

Subject

Preferred

Avoid Asking

Comment

Family Status	number of children or dependents about arrangements for child care	if the employer has a policy against the hiring of close relatives, an applicant can be asked about kinship to other employees	contacts for emergencies and/or details on dependents can be determined after selection
National or Ethnic Origin	about birthplace, nationality of ancestors, spouse or other relatives whether born in Canada if naturalized or landed immigrants for proof of citizenship	since those who are entitled to work in Canada must be citizens, landed immigrants or holders of valid work permits, applicants can be asked if they are legally entitled to work in Canada	documentation of eligibility to work (ie. papers, visas, etc.) can be requested after selection
Military Service	about military service in other countries	inquiry about Canadian military service where employment preference is given to veterans, by law	
Language	mother tongue where language skills obtained	ask if applicant understands, reads, writes or speaks languages which are required for job	testing or scoring applicants for language proficiency is not permitted unless fluency is job-related
Race or Colour	any inquiry which indicates race or colour, including colour of eyes, skin or hair colour		information required for security clearances or similar purposes can be obtained after selection
Photographs	for photo to be attached to applications or sent to interviewer before interview		photos for security passes or company files can be taken after selection
Religion	about religious affiliation, church membership, frequency of church attendance if applicant will work a specific religious holiday for references from clergy or religious leader	explain the required work shifts, asking if such a schedule poses problems for applicant	employers are to reasonably accommodate religious needs of workers
Height and Weight			no inquiry unless there is evidence that they are bona fide occupational requirements

Making Interview Notes

Usually, interviewers will have copies of resumés or applications available at the interview for easy reference or to use as the basis of interview questions. When many applicants are being interviewed, interviewers often make notes on the resumés in order to help differentiate candidates.

Even though these notes may be solely for the use of the interviewer, if they identify or differentiate candidates by one of the criteria of the prohibited grounds (for example "black woman, 45ish" or "East Indian man, very pleasant") they may be seen as evidence of intent to discriminate, and could provide the basis of a complaint.

The Application Form

The Canadian Human Rights Commission will review your application forms to help you ensure your forms do not inadvertently contravene the Act. You can get more information on this service by contacting the Commission.

Managers are invited to get more information on the Canadian Human Rights Act and how it affects interviewing and selection. Contact any of the offices of the Canadian Human Rights Commission:

National Office	Canadian Human Rights Commission 400 - 90 Sparks Street Ottawa, Ontario K1A 1E1 Telephone: (613) 995-1151 Visual Ear: (613) 996-5211
Regional Offices Atlantic	Office Address: 300 - 5670 Spring Garden Road Halifax, Nova Scotia B3J 1H1 Telephone: (902) 426-8380 Mailing Address: P.O. Box 3545 Halifax South Postal Station Halifax, Nova Scotia B3J 3J2
Quebec	330 - 1253 McGill College Avenue Montreal, Quebec H3B 2Y4 Telephone: (514) 283-5218
Ontario	623 - 55 St. Clair Avenue East Toronto, Ontario M4T 1M2 Telephone: (416) 966-5527
National Capital Region	Office Address: 915 - 270 Albert Street Ottawa, Ontario K1P 5G8 Telephone: (613) 996-0026 Mailing Address: P.O. Box 2052, Station D Ottawa, Ontario K1P 5W3
Prairie	718 - 275 Portage Avenue, Winnipeg, Manitoba R3B 2B3 Telephone: (204) 949-2189 Visual Ear: (204) 949-2882
Alberta & NWT	401 - 10506 Jasper Avenue Edmonton, Alberta T5J 2W9 Telephone: (403) 420-4040
Western	600 - 609 West Hastings Street, Vancouver, British Columbia V6B 4W4 Telephone: (604) 666-2251

The Canadian Human Rights Act bans discrimination in federal jurisdiction on the grounds of race, colour, national or ethnic origin, sex, religion, age, marital status, family status, pardoned conviction or disability.

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